

Chapter IX

ACQUISITION

Introduction

Missouri CDBG grantees are required to comply with uniform acquisition and relocation policies and procedures as set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). Also, under Section 104(d) of the Housing and Community Development Act of 1974, as amended, CDBG grantees have the responsibility to minimize displacement that results from CDBG-funded projects. If Federal financial assistance is used in any part of the project, the Uniform Act would govern the grantee's acquisition of real property for the project and any resulting displacement, even if local or private funds are used to pay the acquisition costs. **CDBG acquisition and relocation guidelines are effective from the date of the grantee's pre-application public hearing.**

What is the Uniform Act?

The Uniform Act has a dual public policy intent:

Real Property Acquisition: It is the intent of the Act to encourage and to expedite the acquisition of real property by agreements with property owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for property owners in Federal programs, and to promote public confidence in Federal land acquisition practices.

Relocation Assistance: The intent of the Act is to establish a uniform policy for fair and equitable treatment of persons displaced as a result of Federal and Federally-assisted programs. Relocation assistance must be available as specified in the applicable provisions of the Uniform Act or, if applicable, Section 104(d) of the Housing and Community Development Act.

Where does the Uniform Act apply?

Property acquisition under the Uniform Act begins with the grantee's decision to "acquire" a specific property or properties for a CDBG project. "Acquire" is defined as permanent easement, full title, long-term lease, or right of way.

Where does the Uniform Act NOT apply?

The only acquisition activities that are not subject to the Uniform Act are temporary easements, an acquisition from another public agency, and a "voluntary acquisition" in response to a non-site specific public solicitation. Please note that "voluntary acquisition" has a very specific definition.

PROPERTY ACQUISITION PROCEDURES

Property acquisition under the Uniform Act is a sequential process that begins with the grantee's decision to acquire a specific property or properties (e.g., easements) for a CDBG project. As stated above, all acquisitions made after the grantee's pre-application public hearing date are subject to the Act, regardless of the source of payment. AR-1 in the appendix to this chapter presents the typical acquisition process under the Uniform Act.

1. Determine acquisitions necessary for the CDBG project. The first step in the acquisition process is to review each of the project activities with the grant administrator, engineer, and the field representative to determine the particular properties that must be obtained. Under the Uniform Act property is defined as four types of permanent ownership: full title, permanent easement, long term lease (50 years or more), or rights of way. Acquisition is defined as either a purchase or donation under the Uniform Act. The only acquisitions that are not subject to the Uniform Act are temporary easements, an acquisition from another public agency, and a "voluntary acquisition" in response to a non-site specific public solicitation. "Voluntary Acquisition" is defined at 24.101(a)(1) of the Uniform Act, and it is not defined as a "donation." The CDBG procedure regarding donation is covered in a later part of this chapter.
2. Establish title evidence to determine actual ownership. The second step in the process is to obtain title evidence, such as the deed and the legal description of the property. Review the county recorder's deed records to determine the actual property owner, and review the legal description of the property to determine any existing easements.
3. Provide preliminary acquisition notice and HUD Brochure.

a. For full title, long term lease, and right of way acquisition:

- i. Provide preliminary acquisition notice (see AR-4)
- ii. Provide HUD brochure titled "When a Public Agency Acquires Your Property" (see AR-2).

The Notice and the HUD Brochure can be sent by regular mail, certified or registered mail with return receipt requested, or may be hand delivered. If delivered by regular mail or hand delivered, the signature of the property owner is required. Copies of this notice and all other acquisition materials should be maintained in separate files established for each property acquisition.

b. For permanent easements:

- i. Provide CDBG Easement brochure (See AR-3)

This brochure can be sent by regular mail, certified or registered mail with return receipt requested, or it may be hand delivered. If delivered by regular mail or hand delivered, the signature of the property owner is required. Copies of this notice and all other acquisition materials should be maintained in separate files established for each property acquisition. If Rural Development has funds in the project, the brochure distribution is still a requirement.

- c. **Donation:** Nothing in the regulation prevents a person after being informed of their rights to just compensation, based on a review of available data or an appraisal of their real property, from donating their property or easement to the grantee. Because a property

owner is entitled to just compensation under the Uniform Act, a donation should never be assumed. A Waiver of Just Compensation should be prepared by the grantee. It should clearly state that the owner understands that he cannot be required to donate the property or to sell it to the grantee at less than the amount of the appraised value unless the owner voluntarily agrees. The waiver should clearly show the property owner's intent to voluntarily release the grantee of its obligation to determine just compensation based upon an appraisal after being informed of their rights under the Uniform Act. Because a property owner is entitled to an appraisal before making a decision to donate, it is incumbent on the grantee to document that the owner was made aware of that right prior to obtaining the signed waiver. A waiver signed by each property owner must be kept in the grantee's acquisition files.

Keep in mind that a donation is defined as the grantee's acquisition after fully informing the property owner of their Uniform Act rights. The specific property is conveyed to the grantee by written consent of the owner. Here the property owner agrees to transfer full title, grant a permanent easement, establish a lease of 50 years or less, or grant right-of-way interest without receiving just compensation. However, the grantee is responsible for all costs associated with the transfer and recording fees.

Donation: Full Title value over \$2,500

- Preliminary Acquisition Notice
- HUD brochure titled "When a Public Agency Acquires Your Property"
- Waiver of Rights for Just Compensation and Rights to an Appraisal

Donation: Full Title value under \$2,500

- Preliminary Acquisition Notice
- HUD brochure titled "When a Public Agency Acquires Your Property"
- Waiver of Rights for Just Compensation and Rights to an Appraisal, if property is valued less than \$2,500 fair market value (if applicable)

Donation: Long Term Lease and Right of Way donation forms

- Request sample forms from CDBG

4. Appraisal, review appraisal, and acquisitions not subject to the appraisal requirements. An appraisal and review appraisal are required if the value of the property or easement exceeds \$2,500. When an appraisal is required for compliance with the Uniform Act, the grantee should procure both an independent, professional appraiser and a review appraiser in accordance with CDBG's competitive proposal method. No appraiser shall have an interest in the property to be acquired. A professional service contract must be executed with the appraiser. A sample HUD appraisal contract is available upon request from CDBG; however, CDBG recommends the use of the standard appraisal contract used by licensed Missouri appraisers. The Uniform Act requires the grantee's appraiser to invite the property owner to accompany him during the property inspection. The Act also requires that the appraiser not consider race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of real property. The appraiser shall disregard any decrease or increase in fair market value of the real property caused by the project to the extent permitted by applicable state law. The completed appraisal and review appraisal must be maintained in the acquisition file of that property owner.

An appraisal is not required if the owner is donating the property and releases the grantee of the appraisal obligation, or the grantee determines that an appraisal is unnecessary because the valuation is uncomplicated and the fair market is estimated at \$2,500 or less, based on a review of available data. Available data may, for example, be the price per acre based on recent property sales of similar property in the area. Documentation of the available data must be maintained in each acquisition file.

- If Negotiations Are Not Successful.** After a final offer letter is sent that includes a response deadline (AR-10), the grantee may exercise their statutory right of condemnation after expiration of the deadline. Once the condemnation report has been filed the city must deposit with the clerk the amount of the commissioner' award.

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greater than the additional amount being requested by the owner, the owner's proposed higher value may be accepted.

Condemnation can be substantially more expensive than a negotiated price, and the grantee is required to pay the amount established by the court in a condemnation proceeding. For this reason, the grantee must determine and fully document the reasonableness of the cost of proceeding to condemnation. The grantee shall not take any coercive action against a property owner in order to induce an agreement on the price to be paid for their property.

8. Transfer title. Once a negotiation is successful or a condemnation proceeding is completed, the following tasks remain:
 - The deed, the easement, or the relevant legal form for the type of acquisition (permanent ownership) must be transferred and **promptly recorded** at the office of the county recorder of deeds.
 - The grantee pays or reimburses the owner for incidental reasonable costs associated with the transfer of title. These costs include, but are not limited to, recording fees, transfer taxes, evidence of title, and the legal description.
 - The grantee is **not responsible** for any costs required to perfect the owner's title.
9. Recordkeeping to Document Performance. It is important that the grantee keeps records sufficient to document compliance with the provisions of the Uniform Act. **AR-11** provides a recommended acquisition recordkeeping system. Every step listed above that generates documents, forms, or paperwork must be found in the individual property file. Always maintain a separate file for each property owner.
10. Reuse Plans. If the acquisition and demolition activities are based on meeting the 51% LMI benefit national objective, then the grantee must submit a reuse plan to CDBG to document the LMI benefit. The reuse plan must be submitted and approved by CDBG prior to the grantee's demolition activity. If the acquisition and demolition activities are based on achieving the national objective of eliminating slum and blight, then a reuse plan is not required. However, the activities must meet either the grantee's, the State's or HUD's slum and blight criteria, or are determined infeasible to rehabilitate.

UNIFORM ACT RELOCATION REQUIREMENTS

The Uniform Act specifies the relocation payments and relocation advisory services for which a displaced person is **entitled**. Displaced individuals, families, businesses, nonprofit organizations, and farm operations are covered by the Act. Any person displaced as a result of project rehabilitation, demolition, or acquisition, **privately undertaken or public**, is entitled to relocation payments and services specified under the Act. The following is a brief description of a displaced person's rights under the Uniform Act. Grantees should consult CDBG staff concerning questions about the application of the Uniform Act's relocation requirements to your project. Relocation notices, claim forms, and other documents mentioned in this section may be obtained by requesting a relocation packet from CDBG. Please maintain a separate file for each project relocation.

In planning relocation activities, grantees should consider and rectify adverse impacts of displacement on minorities, the elderly, large families, and the handicapped where applicable. Also, the Uniform Act provides that the displaced person/family be provided the choice of relocating in their present neighborhood or other neighborhoods, consistent with the grantee's responsibility to affirmatively further fair housing. The following contains a procedure that is typically followed in a Uniform Act Relocation.

1. Rehabilitation Feasibility Determination: If a family is displaced as a result of a CDBG neighborhood development project, the grantee must document that the family's house is not feasible to rehabilitate to CDBG's "health and safety" standards. A house is considered "not feasible" to rehabilitate if the inspector's cost estimate exceeds CDBG's rehabilitation cost limit of \$15,000, or \$15 per square foot of finish space. In cases where the grantee had not originally identified the home as being infeasible to rehabilitate in its application, a grantee must submit the inspector's cost estimate for CDBG review before issuing any acquisition/relocation notices.
2. Relocation Assistance Notice: Once a grantee has determined that a family will be displaced, the grantee must provide the displaced family with both a Notice of Relocation Eligibility and a general written description of the grantee's relocation assistance program. The relocation notice and program description may be combined with the Preliminary Acquisition Notice. The applicable HUD relocation (and acquisition, if applicable) brochure **must** be provided with the notice(s). At least three comparable replacement units must be offered to the displaced family. All required notices must be sent by certified mail or hand delivered and documented with a return or signed receipt.

The Relocation Notice should inform the displaced person of at least the following:

- a. The person/family who is being displaced as a direct result of the project will not be required to move without, at the minimum, a 90-day written notice from the grantee;
- b. Eligible amounts of the relocation assistance and moving expense payments, consistent with the requirement of the Act;
- c. A person/family cannot be required to move unless the grantee has offered at least one comparable replacement unit that meets HUD's decent, safe, and sanitary standards. Section 8 standards may be used to meet this requirement;
- d. The person/family is eligible for relocation advisory services, such as help in filling out claim forms for both relocation and moving expense payments, referrals to comparable replacement dwellings, transportation if necessary to inspect comparable replacement units, and a personal interview to determine advisory service needs;

- e. The person has the right to appeal the grantee's determination of non-eligibility or the amount of moving and relocation payments through the grantee's grievance process; and
- f. The name and telephone number of the grantee's relocation assistance administrator.

3. Moving Expense Payment: Displaced individuals, families, businesses, nonprofit organizations, and farm operations who are required to move because of project acquisition, rehabilitation, or demolition are eligible for a moving expenses payment, which includes utility disconnection and/or hookup costs, regardless of length of occupancy. "Actual" or "fixed" moving expenses **must** be documented with a moving expense claim form. The amount of the "fixed" moving expense payment for individuals and families is based on a published HUD schedule, so please consult with CDBG to obtain the most recent schedule. The payment of "actual" moving expenses must be documented in each displaced person's file with copies of canceled checks and attached receipts. Eligible moving expenses are transportation costs within 50 miles, packing, crating, storage, insurance, and other reasonable and necessary costs. Moving expenses may be knowingly waived by the displaced family; however, the back of the moving expense claim form must be used to explain who will pay for utility disconnection and re-connection fees and who will move the family's belongings. The displaced family must sign this form.

Self-Moves: If a displaced family elects to take full responsibility for their move, the grantee may make a moving expense payment based on an amount not to exceed the lower of two acceptable bids or estimates. An uncomplicated move may be based on a single bid or an estimate. Receipts must be in the family's file to document the payment of the actual moving costs.

4. Relocation Assistance Payment: Individuals and families are entitled to a relocation assistance payment for a comparable dwelling. The payment can take the form of rental, down payment, and comparable replacement housing or last resort housing assistance. Businesses, nonprofit organizations, and farm operations are entitled to a payment for "re-establishment expenses." The law covers two basic classifications of displaced persons and includes the following occupancy eligibility requirements:

- a. 180-day Homeowner is eligible for a Replacement Housing Payment. This person must have owned and occupied the displacement dwelling 180 days prior to the initiation of acquisition negotiations, and purchased and occupied a decent, safe, and sanitary comparable replacement house. This payment should not exceed \$22,500. It is calculated by summing the:

- i. full price differential between the displaced home and the replacement home;

Replacement dwelling purchase price: \$31,500

Less Displaced dwelling purchase price: 12,500

Differential =\$19,000

- ii. plus all increased mortgage interest cost, necessary to retain the same monthly mortgage payment and based on buy-down method (example: mortgage buy-down and other debt service cost);

+\$ 2,000

- iii. plus all incidental expenses (e.g., recording fees, prorated taxes, appraisal fees, notary fees, boundary surveys, termite inspection, title insurance, deed preparation, etc.);

$$\begin{array}{r}
 +1,300 \\
 \text{Total Housing Replacement Payment} = \$22,300
 \end{array}$$

A 180-day claim form must be filed with the grantee by the displaced family before the grantee may process the relocation payment. An alternative method to the one shown above is for the displaced family to donate their displacement dwelling and receive the full price of the replacement dwelling. This step avoids the appraisal process and costs, but accomplishes the purchase of the same replacement unit. Applied to the above example, the displaced family would donate their displacement unit and receive a \$31,500 relocation assistance payment, instead of \$22,300, to purchase the same replacement dwelling. The differential is the value of the dwelling purchased by the grantee.

b. 90-day Tenants or Homeowners who have:

- i. occupied the dwelling from which they will be displaced for no less than 90 days immediately prior to the initiation of the acquisition negotiations,
- ii. rented or purchased and occupied a decent, safe, and sanitary replacement unit; and
- iii. filed their relocation assistance claim form within one year of moving to their replacement dwelling with the grantee.

The 90-day tenant or homeowner is eligible to choose between one of the following two forms of payment:

- iv. Rental Assistance Payment not to exceed \$5,250*. Payment may be made in a lump sum or averaged over several months, not to exceed 42 months. Payments are calculated by adding the monthly rent and estimated utilities cost of the lesser of either the **comparable replacement unit** or the **actual replacement unit** and then subtracting the same monthly costs of the **displaced dwelling**. A claim form for a rental assistance payment must be approved by the grantee and maintained in their relocation file.

<i>Example: Replacement unit monthly rent</i>	<i>\$275.00</i>
<i>Replacement unit average monthly utilities</i>	<i>+ 100.00</i>
<i>Replacement unit base monthly cost</i>	<i>\$375.00</i>
<i>Less displaced dwelling base monthly cost</i>	<i>- 250.00</i>
<i>Averaged monthly differential</i>	<i>\$125.00</i>
<i>X 42 month limit</i>	<i>x 42</i>
<i>Rental Assistance Payment</i>	<i>\$5,250.00</i>

*The displaced dwelling monthly cost may also be calculated using 30% of the displaced person's average gross household income or the amount designated for rent and utilities if the displaced person is receiving a public assistance payment. For determining the amount of the relocation payment, the lesser of these two calculations should be used.

The replacement rental unit selected by the displaced person must meet HUD's decent, safe, and sanitary standards.

- v. Down Payment Assistance Payment is also limited to \$5,250. Here, the relocation assistance payment is available to a 90-day tenant who **purchases** a replacement home.

This dwelling must also meet HUD's decent, safe, and sanitary standards. This payment is calculated in the same way as the above rental assistance payment. The displaced family must file a down payment assistance claim form with the grantee. A claim form must be processed before the grantee can make payment.

5. Replacement Housing of Last Resort: If comparable replacement sale or rental housing is not available, then last resort housing may be provided to the displaced person by the grantee. A displaced family may also request that the last resort housing remain on their existing lot. Last resort housing shall be provided on a reasonable cost basis. The activities for providing replacement housing of last resort include, but are not limited to:
 - a. Rehabilitation of and/or additions to an existing replacement dwelling;
 - b. Relocation and, if necessary, the rehabilitation of a dwelling;
 - c. Construction of a new replacement dwelling
 - d. Removal of barriers to the handicapped; and
 - e. Meeting the handicapped adaptability and accessibility design and construction requirements.
6. Optional Relocation: Under section 105(a)(11) of the Housing and Community Development Act, the State may permit a grantee to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to the Uniform Act or Section 104(d) activities. The assistance shall only be provided upon the basis of a written policy adopted by the recipient and available to the public. The adopted policy shall describe the relocation assistance to be provided on an equal basis within each class of displaced families.
7. Re-establishment Expenses Payment: Small businesses, farm operations, or nonprofit organizations are eligible to receive a payment for expenses actually incurred in re-establishing their operation at the replacement site. Expenses must be documented and be reasonable and necessary. Please contact a CDBG field representative for claim forms, the HUD brochure, and the sample notice letter for this type of relocation.
8. Advance Relocation Payments: If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the grantee shall issue the payment, subject to safeguards as are appropriate to ensure that the objective of the payment is accomplished.
9. Notice of Denial of Claim and Right of Appeal: The Uniform Act allows a relocation applicant the right to appeal a grantee's denial of eligibility of their relocation application or the determination of the amount of relocation assistance. All grantees must incorporate this right of appeal in their adopted grievance procedure.

ADDITIONAL RELOCATION ASSISTANCE RECORDKEEPING REQUIREMENTS

1. List of Occupants. For each project, the grantee's files shall include a list or lists identifying the name, address, and race/ethnicity (and gender if single head of household).
2. A general description of the advisory services for which the person may be eligible (including assistance to relocate to a comparable replacement dwelling, basic eligibility conditions, and procedures for obtaining payments). The general description can be in the form of a leaflet.
3. Identification of actual replacement property (address), rent/utility cost or sale price (if dwelling), date of relocation, and whether located in an area of minority concentration.
4. Copy of replacement dwelling inspection report showing condition of unit and date of inspection.
5. Maintain a relocatee contact log.

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN REQUIREMENTS, SECTION 104(D) OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Section 104(d) relocation requirements are designed to protect from depletion, by **demolition** or **conversion** to another use (i.e., parking lot or condos), the available stock of low/moderate-income houses or apartments in CDBG assisted projects. Therefore, grantees undertaking any demolition activities must pay attention to these requirements, whether or not they are acquiring a house or relocating the occupant. The Act requires that before a CDBG grant can be awarded, a grantee **must** certify that it is following a "residential anti-displacement plan." The "Sample Plan" was submitted with the grant application. Should a Section 104(d) demolition or conversion occur during the implementation of the grant, an amended Section 104(d) plan must be submitted for review and approval to the CDBG staff, **prior to** the initiation of the demolition and/or conversion activities. A grantee must obtain CDBG review and approval of their amended plan **prior to** CDBG funds being drawn down for those demolition, acquisition, and/or relocation activities. A Section 104(d) notice must also be published prior to the 104(d) activities.

The grantee's amended plan must comply with Section 104(d)'s **one-for-one replacement requirements**. Under the rule, all **occupied** and **vacant occupiable** low/moderate-income dwelling units **demolished** or **converted** to a use other than as low/moderate-income dwelling units, as a direct result of activities assisted under the CDBG program, **must** be replaced with low/moderate-income dwellings units. A "vacant available dwelling unit" is defined as a vacant unit that is in standard condition, or a vacant unit that is in substandard condition, but is suitable for rehabilitation, or a vacant unit in any condition that has been occupied within the 12 months preceding the date of the contract between the grantee and the property owner whose unit will be demolished or converted. The State defines "substandard but suitable for rehabilitation" as the costs to rehabilitate the finished space of the unit to CDBG's Health and Safety Standards. That cost may not exceed \$15,000 or \$15 per square foot of finished space. In a CDBG neighborhood development project, a grantee may rehabilitate a dwelling that has been vacant at least 90 days and use it as their Section 104(d) one-for-one replacement unit. The unit must remain affordable to LMI households for at least 10 years. A unit is affordable if the mortgage or rent does not exceed the applicable fair market rent.

Section 104(d) provides for an exception to the one-for-one replacement requirement. The one-for-one replacement requirement will not apply if there is an adequate supply of **available**, vacant

low/moderate-income dwelling units in standard condition in the grantee's jurisdiction. The State's finding of an "exception" is subject to HUD's review and approval. To support an exception request, a grantee must provide documentation of an excess supply of available vacant homes and/or apartments that are affordable to LMI families. Also, the Section 104(d) one-for-one replacement requirement will not apply to any LMI unit that has been vacant for more than 12 months.

Section 104(d) Relocation Assistance. Persons of low/moderate-income households who are displaced as a result of the demolition of any housing unit or the conversion of a low/moderate income unit to another use must be provided with the following relocation assistance by the grantee:

1. Advisory services;
2. Actual or fixed moving expenses as described in the Uniform Act;
3. Reimbursement for reasonable and necessary security deposit and credit checks; and
4. Replacement housing assistance payment.

The replacement housing assistance for a 180-day homeowner is identical to that discussed under the Uniform Relocation Act section of this chapter.

However, the grantee must offer a person choosing to rent the following relocation assistance:

1. Section 8 housing voucher/certificate and referrals to comparable replacement units where the owner agrees to participate in the Section 8 Program; or
2. Cash rental assistance to reduce the rent and utility cost to 30% of the gross household income for 60 months. Grantee must make appropriate referrals to comparable replacement units.

Document payment with a Section 104(d) claim form and a copy of the canceled check. The displaced person may choose Uniform Act Relocation Assistance instead of the Section 104(d) relocation assistance described above. The Uniform Act assistance is a viable option for occupants who want to purchase a home rather than continue to rent.

CDBG MONITORING

In this, as in other areas, CDBG is responsible for monitoring compliance with applicable Federal and State laws and regulations. In conducting field reviews of activities, CDBG staff will use the Acquisition Checklist in the Program Administration Chapter of this manual. Please do not hesitate to call your CDBG Field Representative or the staff Acquisition Specialist regarding any questions you might have. Also, do not hesitate to call for brochures, forms, or sample notices and waiver forms. In addition to the forms and materials mentioned above, the following HUD brochures, claim forms, and regulations are available from CDBG:

1. Right-Of-Way-Easement
2. Uniform Act Regulations
3. Sample Plan for Section 104(d) Compliance
4. HUD Handbook No. 1378, Tenant Assistance, Relocation and Real Property Acquisition, April 17, 1997, includes CHG-1-4.

ACQUISITION

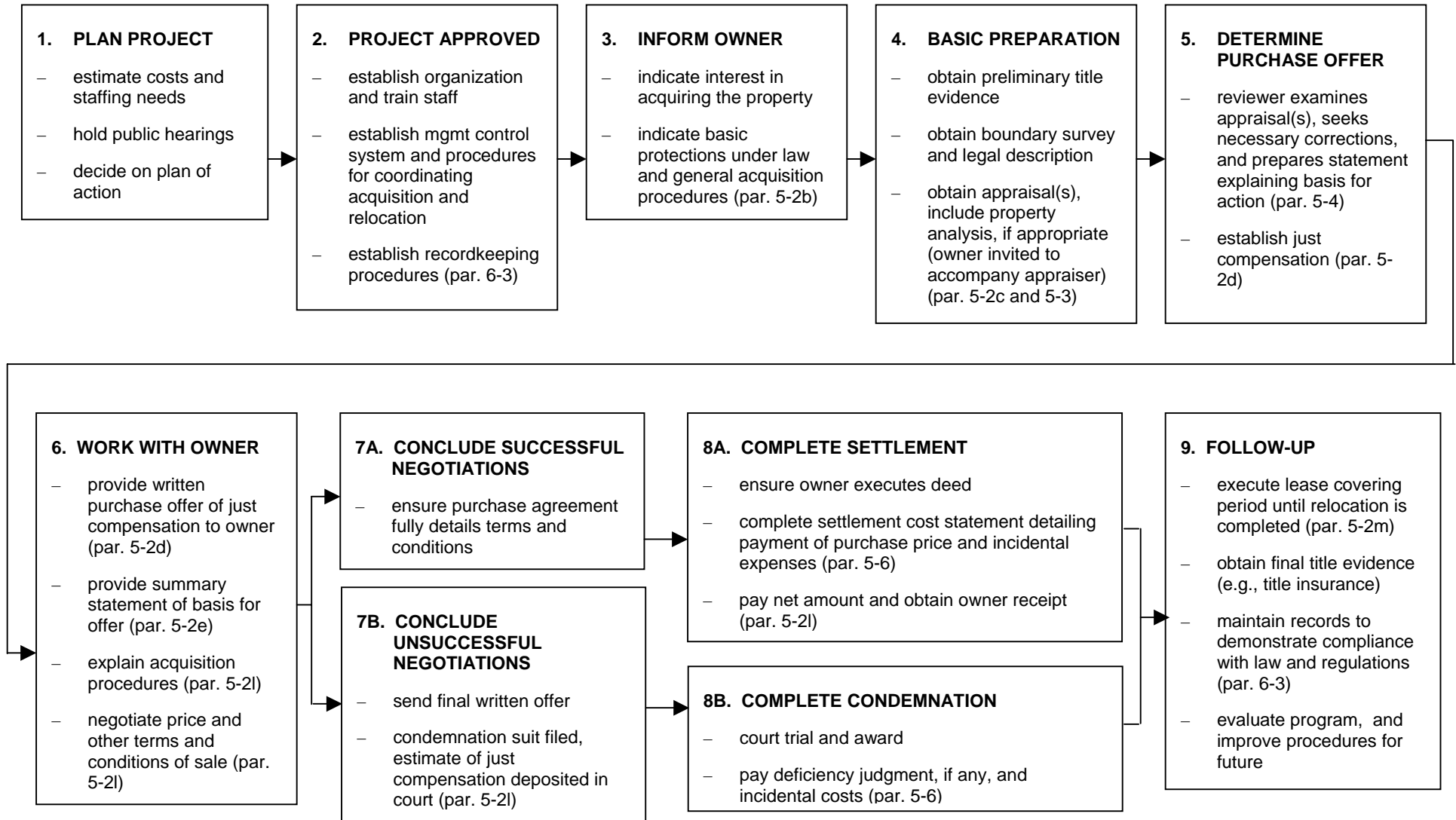
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AR-1: ACQUISITION PROCESS UNDER THE URA*

*Uniform Relocation Act Rules Effective 4/2/89 (HUD Handbook 1378)

Note: Paragraph numbers refer to HUD Handbook 1378.



AR-2: WHEN A PUBLIC AGENCY ACQUIRES YOUR PROPERTY

(HUD-1041-CPD) JANUARY 2004

U.S. Department of Housing
and Urban Development
Office of Community Planning
and Development



When A Public Agency Acquires Your Property

Introduction

This booklet describes important features of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended (URA) and provides general information about public acquisition of real property (real estate) that should be useful to you.

Most acquisitions of real property by a public agency for a Federal project or a project in which Federal funds are used are covered by the URA. If you are notified that your property will be acquired for such a project, it is important that you learn your rights under this important law.

This booklet may not answer all of your questions. If you have more questions about the acquisition of your property, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you sell your property. Afterwards, it may be too late.

General Questions

What Right Has Any Public Agency To Acquire My Property?

The Federal Government and every State government have certain powers which are necessary for them to operate effectively. For example, they have the power to levy taxes and the power to maintain order. Another government power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S. Constitution and by State constitutions and eminent domain laws which guarantee that if a public agency takes private property it must pay "just compensation" to the owner. The URA provides additional protections, as explained in this booklet.

Who Made The Decision To Buy My Property?

The decision to acquire a property for a public project usually involves many persons and many determinations. The final determination to proceed with the project is made only after a thorough review which may include public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should ask a representative of the Agency which is responsible for the project.

How Will The Agency Determine How Much To Offer Me For My Property?

Before making you an offer, the Agency will obtain at least one appraisal of your property by a competent real property appraiser who is familiar with local property values. The appraiser will inspect your property and prepare a report that includes his or her professional opinion of its current fair market value. After the appraiser has completed his work, a review appraiser will examine the appraisal report to assure that the estimate is fair and the work conforms with professional appraisal standards.

The Agency must offer you “just compensation” for your property. This amount cannot be less than the appraised fair market value of the property. “Just compensation” for your property does not take into account your relocation needs. If you are eligible for relocation assistance, it will be additional.

What Is Fair Market Value?

Fair market value is sometimes defined as that amount of money which would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In some areas a different term or definition may be used.

The fair market value of a property is generally considered to be “just compensation.” Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any special value that your property may have for you or for the Agency.

How Does An Appraiser Determine The Fair Market Value Of My Property?

Each parcel of real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much rental income it could produce.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.

Will I Have A Chance To Talk To The Appraiser?

Yes. You will be contacted and given the opportunity to accompany the appraiser on his or her inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to insure that nothing of allowable value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.

How Soon Will I Receive A Written Purchase Offer?

Generally, this will depend on the amount of work required to appraise your property. In the case of a typical single-family house, it is usually possible to make a written purchase offer within 45 to 60 days of the date an appraiser is selected to appraise the property.

Promptly after the appraisal has been reviewed (and any necessary corrections obtained), the Agency will determine just compensation and give you a written purchase offer in that amount along with a "summary statement," explaining the basis for the offer. No negotiations are to take place before you receive the written purchase offer and summary statement.

What Is In The Summary Statement Of The Basis For The Offer Of Just Compensation?

The summary statement of the basis for the offer of just compensation will include:

- An accurate description of the property and the interest in the property to be acquired.
- A statement of the amount offered as just compensation. (If only part of the property is to be acquired, the compensation for the part to be acquired and the compensation for damages, if any, to the remaining part will be separately stated.)
- A list of the buildings and other improvements covered by the offer. (If there is a separately held interest in the property not owned by you and not covered by the offer (e.g., a tenant-owned improvement), it will be so identified.)

Must I Accept The Agency's Offer?

No. You are entitled to present your evidence as to the amount you believe is the fair market value of your property and to make suggestions for changing the terms and conditions of the offer. The Agency will consider your evidence and suggestions. When fully justified by the available evidence of value, the offer price will be increased.

May Someone Represent Me During Negotiations?

Yes. If you would like an attorney or anyone else to represent you during negotiations, please inform the Agency. However, the URA does not require the Agency to pay the costs of such representation.

If I Reach Agreement With The Agency, How Soon Will I Be Paid?

If you reach a satisfactory agreement to sell your property and your ownership (title to the property) is clear, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after you sign a purchase contract. If the title evidence obtained by the Agency indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the Agency obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens, and other instruments affecting your ownership of the property.)

What Happens If I Don't Agree To The Agency's Purchase Offer?

If you are unable to reach an agreement through negotiations, the Agency may file a suit in court to acquire your property through an eminent domain proceeding. Eminent domain proceedings are often called condemnations. If your property is to be acquired by condemnation, the Agency will file the condemnation suit without unreasonable delay.

What Happens After The Agency Condemns My Property?

You will be notified of the action. Condemnation procedures vary, and the Agency will explain the procedures which apply in your case.

Generally, when an Agency files a condemnation suit, it must deposit with the court (or in an escrow account) an amount not less than its appraisal of the fair market value of the property. You should be able to withdraw this amount, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

During the condemnation proceeding, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the Agency will have the same right. After hearing the evidence of all parties, the court will determine the amount of just compensation. If that amount exceeds the amount deposited by the Agency, you will be paid the difference, plus any interest that may be provided by law.

To help you in presenting your case in a condemnation proceeding, you may wish to employ an attorney and an appraiser. However, in most cases the costs of these professional services and other costs which an owner incurs in presenting his or her case to the court must be paid by the owner.

What Can I Do If I Am Not Satisfied With The Court's Determination?

If you are not satisfied with the court judgment, you may file an appeal with the appropriate appellate court for the area in which your property is located. If you are considering an appeal, you should check on the applicable time limit for filing the appeal and consult with your attorney on whether you have a basis for the appeal. The Agency may also file an appeal if it believes the amount of the judgment is too high.

Will I Have To Pay Any Closing Costs?

You will be responsible for the payment of the balance on any mortgage and other liens on your property. Also, if your ownership is not clear, you may have to pay the cost of clearing it. But the Agency is responsible for all reasonable and necessary costs for:

- Typical legal and other services required to complete the sale, recording fees, revenue stamps, transfer taxes and any similar expenses which are incidental to transferring ownership to the Agency.
- Penalty costs and other charges related to prepayment of any recorded mortgage on the property that was entered into in good faith.
- Real property taxes covering the period beginning on the date the Agency acquires your property.

Whenever possible, the Agency will make arrangements to pay these costs directly. If you must incur any of these expenses yourself, you will be repaid—usually at the time of closing. If you later discover other costs for which you should be repaid, you should request repayment from the Agency

immediately. The Agency will assist you in filing a claim. Finally, if you believe that you were not properly repaid, you may appeal the decision to the Agency.

May I Keep Any Of The Buildings Or Other Improvements On My Property?

Very often, many or all of the improvements on the property are not required by the Agency. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let the Agency know as soon as possible.

If you do arrange to keep any improvement, the Agency will deduct only its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his or her own expense.) Of course, if you arrange to keep any real property improvement, you will not be eligible to receive a relocation payment for the cost of moving it to a new location.

Can The Agency Take Only A Part Of My Property?

Yes. But if the purchase of only a part of your property reduces the value of the remaining part(s), you will be paid for the loss in value. Also, if any remaining part would have little or no utility or value to you, the Agency will offer to buy that remaining part from you.

Occasionally, a public project will increase the value of the part which is not acquired by the Agency. Under some eminent domain laws, the amount of such increase in value is deducted from the purchase payment the owner would otherwise receive.

Will I Have To Pay Rent To The Agency After My Property Is Acquired?

If you remain on the property after the acquisition, you may be required to pay a fair rent to the Agency. Such rent will not exceed that charged for the use of comparable properties in the area.

How Soon Must I Move?

If possible, a mutually agreeable date for the move will be worked out. Unless there is an urgent need for your property (e.g., your occupancy would present a health or safety emergency), you will not be required to move without at least 90 days advance written notice.

If you reach a voluntary agreement to sell your property, you will not be required to move before you receive the agreed purchase price. If the property is acquired by condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court so that you can withdraw your share.

If you are being displaced from your home, you will not be required to move before a comparable replacement home is available to you.

Will I Receive Relocation Assistance?

Title II of the URA requires that certain relocation payments and other assistance must be provided to families, individuals, businesses, farms, and nonprofit organizations when they are displaced or their personal property must be moved as a result of a project that is covered by the URA.

The Agency will furnish you a full explanation of any relocation assistance to which you may be entitled. If you have any questions about such assistance, please contact the Agency. In order for the Agency to fulfill its relocation obligations to you, you must keep the Agency informed of your plans.

My Property Is Worth More Now. Must I Pay Capital Gains Tax On The Increase?

When a public agency acquires real property for public purposes, the property owner usually may postpone the payment of Federal capital gains taxes on any profit from the sale if he or she reinvests the profit in similar property within a certain replacement period. To take advantage of this right, you should file the details in a statement with your Federal income tax return for the tax year in which you realize the gain.

Internal Revenue Service (IRS) Publication 544 explains how the Federal income tax would apply to a gain or loss resulting from the condemnation of real property, or its sale under the threat of condemnation, for public purposes. If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

I'm A Veteran. How About My VA Loan?

After your VA home mortgage loan has been repaid, you will be permitted to obtain another VA loan to purchase another property. Check on such arrangements with your nearest Veterans Administration Office.

Is It Possible To Donate Property?

Yes. You may donate your property or sell it to the Agency for less than its fair market value. The Agency must obtain an appraisal of the property and offer just compensation for it, unless you release the Agency from these obligations.

Additional Information

If you have any questions after reading this booklet, contact the Agency and discuss your concerns with the Agency representative.

AGENCY

ADDRESS

OFFICE HOURS

TELEPHONE NUMBER

PERSON TO CONTACT



January 2003
HUD-1041-CPD
(Previous Edition Obsolete)



AR-3: CDBG PROJECT EASEMENTS BROCHURE

INTRODUCTION

Community Development Block Grant (CDBG) funded water and sewer improvements usually involve the installation or replacement of utility lines on the properties of existing or future customers. The donation of easements for these lines is a cost saving mechanism to successfully provide your community with safe water or safe waste disposal. To familiarize you with the donation process, we have prepared this informational brochure.

The donation of an easement, where federal funds are involved in a project, are governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. It is commonly referred to as the Uniform Act. The procedures under the Act can be separated into five steps. They are:

1. Notice of Project
2. Notice of Uniform Act Rights
3. Donation & Recording Easement
4. Negotiation, if necessary
5. Eminent Domain, if necessary

NOTICE OF PROJECT

This easement brochure is your notice of our jointly funded CDBG public facility project and of our need for your easement as part of this project. To make the project more cost effective for all residents, you are respectfully asked to donate your easement for the benefit of this project.

NOTICE OF UNIFORM ACT RIGHTS

Under the Uniform Act, an easement owner has three basic rights:

1. Just Compensation
2. Appraisal & Review Appraisal
3. Right to Accompany Appraiser

Appraisals are not required for easements valued under \$2,500, but a determination of market value must be made and documented.

DONATIONS

An owner may donate their easement for this project after being informed of the above rights.

The donation procedure is a very important tool for public agencies, since most have limited resources. Often, the value of the easement donation is more than offset by the future benefits received by the owner from the

publicly owned water or sewer utility that will be provided.

Easement owners, after having been informed of their Uniform Act rights, are asked to waive those rights and to donate their easement to the project. After agreeing to donate, the easement owner will be asked to sign a Waiver of both Just Compensation and Appraisal rights, and to formally record the easement at the County Recorder of Deeds. The city, county, or district will pay recording fees.

NEGOTIATION

Although an easement owner is not required to donate to receive the specific water or sewer service provided by the project, we strongly encourage donation for the public good. If you decide instead to request just compensation, you may accept the city's offer of just compensation based on either the appraisal or the determination of value, or make a counter offer. In fairness to both property owners and taxpayers, offers must be based on the facts and not on one's ability to negotiate. If you present additional facts or items of value that were not considered in any valuation of your property, an adjustment will be considered and a revised offer may be presented to you. If the amount of just compensation cannot be reached through negotiation, then the laws of condemnation/eminent domain will have to be exercised by the city, county, or district.

CONDEMNATION/EMINENT DOMAIN

The state statutes allow a city, county, or district to acquire an easement by exercising their statutory right of condemnation. This process is initiated by the public agency filing a condemnation petition. If the court determines that the petition is proper, then three condemnation commissioners will be appointed to determine the value of the easement. The court-appointed commissioners, after considering the facts, make their determination of value and file their report with the clerk of the court. After their report is filed with the court, the local public agency must deposit the amount established by the commissioners with the circuit clerk. Exceptions to the commission's easement value may be filed by either the property owner or the public entity within 10-days of the filing the report, otherwise their amount of just compensation becomes final.

CONCLUSION

We strongly encourage you to donate your easement for the success of this project. Your donation will result in a more cost-effective public benefit to you and all of the users of this public facility project.

If you have any additional questions after reading this brochure, please contact the organization listed below:

Agency: _____

Address: _____

Office Hours: _____

Telephone Number: _____

Contact Person: _____

State of Missouri Department of Economic Development State CDBG Program

Project Easements

For: _____

(Title of project Grantee or District)

Funded by: _____

(Grantee, District, CDBG, RD, DNR)

Feb 2002

AR-4: PRELIMINARY ACQUISITION NOTICE

May 19, 2001

U.B. Property Owner
700 North Club Street
Anytown, Missouri 64444

RE: 2001-PF-50 (Anytown)

Dear U.B. Owner:

This is to inform you that the City of Anytown has determined to acquire a permanent easement from you to be used to construct a sewer line across your property as part of our Community Development Block Grant sewer line extension project.

A brochure describing your rights and the city's procedures for acquiring property is enclosed. You have a right to "just compensation" based on an appraisal. The procedures require that the city hire an independent appraiser to appraise the value of the easement. You have the right to accompany the appraiser during the inspection of the property. A letter inviting you to accompany the appraiser will be sent by that appraiser at least five days prior to the inspection. However, where the value of the easement is estimated to be \$2,500 or less, the determination of value may be based on a review of available data, rather than by an appraisal.

However, please note that in the last paragraph of the brochure, a property owner may donate their property. In order to make this project more cost efficient, we are asking you to donate the easement for the sewer line. We have enclosed a waiver of just compensation and donation form for you to review and to sign. If you decide to donate, please contact the city's grant administrator, Grants R Us, to make an appointment for your donation. Because the form does require a notarized signature, our grant administrator will provide a notary public to notarize your signature.

If you have any questions regarding this acquisition, please call the city's grant administrator, Grants R Us, at 444/444-4444.

Very truly yours,

Malcolm Mayor

cc Grants R Us

Enclosures: When a Public Agency Acquires Your Property
Donation of Easement/Waiver form

AR-5: WAIVER OF JUST COMPENSATION AND APPRAISAL RIGHTS

WAIVER OF RIGHTS AND BENEFITS OF THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (42 U.S.C. 4601), based on appraisal

I, _____, as owner of title, understand that I am entitled to Just Compensation for my property based on an independent qualified appraisal under the Uniform Act.

I understand that just compensation to be \$ _____ based on appraisals provided by the City/County for the following property.

(Describe Property)

I hereby waive all my rights to Just Compensation and donate the property described above. I hereby acknowledge receipt of the HUD brochure "When a Public Agency Acquires Your Property."

Date

(Property Owner)

Subscribed and sworn to before me this _____ day of _____, 20__.

(Seal)

(Notary)

AR-6: WAIVER OF JUST COMPENSATION RIGHT ONLY

**WAIVER OF RIGHTS AND BENEFITS OF THE UNIFORM RELOCATION
ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF
1970 (42 U.S.C. 4601)**

I, _____, as owner of title, understand that I am entitled to Just Compensation for my property. The _____ *(city/county/village)* has determined that the property is considered to have a fair market value of less than \$2,500.00. I agree with this determination and acknowledge that the _____ *(city/county/village)* is therefore under no obligation to provide a written appraisal of the following property described below:

(insert legal description of easement here)

I acknowledge receipt of the HUD brochure, "When A Public Agency Acquires Your Property." Based on an understanding of the rights and benefits provided under the Uniform Act, I hereby choose to waive all rights to Just Compensation and donate the property described above.

(Date)

Signature of Property Owner

Subscribed and sworn to before me this _____ day of _____, _____.

(Seal)

Notary

AR-7: STATEMENT OF THE BASIS FOR THE DETERMINATION OF JUST COMPENSATION

Description and Location of Property

The City of California proposes to purchase land on Hollywood Avenue (Lot 8, Square 6, Palmer Extension) from the owner Elizabeth Burtoness at 222 Hollywood Avenue, California, Missouri.

Purpose of Purchase

The City of California intends to use the one-and-a-half acre parcel for the construction of a water tower and for easements for the water lines as part of the city's Community Development Block Grant water system project.

Inventory

It is a one-story single-family, 400 square feet, residence of wood frame construction on a block foundation with a crawl space, hard board siding, and a metal roof.

It contains a living room, kitchenette, one bedroom, and one bath.

Interior finish is carpet over plywood, except linoleum in kitchen and bathroom; paneled walls.

The kitchen has counters and painted wood cabinets. There are no built-in appliances.

Heat is gas-fired, 40,000 BTU floor furnace.

The house is 45 years old. Design is poor. Maintenance is poor.

Declaration of Offer

Based on the appraisal and review appraisal, the City of California hereby makes you an offer in the amount of \$2,500 for the purchase of your property. This offer is for the fair market value of your property and does not include any consideration of decrease or increase in value attributable to the project for which it is being acquired.

AR-8: OFFER TO PURCHASE

September 1, 2001

Mrs. Elizabeth Burtoness
222 Hollywood Avenue
California, Missouri 64444

RE: 2001-PF-52 (California)

Dear Mrs. Burtoness:

We have previously informed you of the city's interest in acquiring your property for our water project. Based on our appraisal and review appraisal of your property and the easement, we have determined the value to be \$2,500. The city hereby makes you a firm offer in the amount of \$2,500 for the purchase of your property.

We believe that the above offer accurately represents the fair market value of your property based on an appraisal. We urge your favorable consideration and acceptance. If this offer meets with your approval, the city's grant representative, Grants R Us, is prepared to purchase and record the property and easement in the city's name. The city would like to start construction of this project within the next few months; therefore, we ask that you contact Grants R Us no later than September 21, 2001, to arrange the final purchase. You may call Grants R Us at 444/444-4444 or stop by and make an appointment at city hall.

If you have any questions, please do not hesitate to contact us at the above phone number.

Very truly yours,

Angela Pearl Mayor

cc Grants R Us

AR-9: OFFER TO PURCHASE/EASEMENT

September 25, 2001

U. A. Property Owner
25 North Easement Row
Anytown, Missouri 64444

RE: 2001-PF-53 (Anytown)

Dear U.A. Owner:

We have previously informed you of the city's interest in acquiring an easement on your property for our sewer line extension project. Based on our review of recent property sales in your area, we have determined the value of the easement to be \$100. The city hereby makes you a firm offer in the amount of \$100 for the purchase of the easement on your property.

We believe that the above offer accurately represents the fair market value of your property based on a review of available data (i.e., recent property sales in your area). We urge your favorable consideration and acceptance. If this offer meets with your approval, the city's grant administrator, Grants R Us, is prepared to purchase and record the easement in the city's name. The city would like to start construction of this project within the next few months; therefore, we ask that you contact Grants R Us no later than October 12, 2001, to arrange the final purchase. You may call Grants R Us at 444/444-4444 or stop by and make an appointment at city hall.

If you have any questions, please do not hesitate to contact us at the above phone number.

Very truly yours,

Carmen Mayor

cc Grants R Us

AR-10: FINAL OFFER TO ACQUIRE PROPERTY

October 25, 2001

U. A. Property Owner
25 North Easement Row
Anytown, Missouri 64444

RE: 2001-PF-53 (Anytown)

Dear U.A. Owner:

I write to follow up on our original offer to acquire an easement on your property. In our July 1, 2000, offer letter, we asked that you respond by October 12, 2001, regarding your acceptance of the city's offer of \$100 to purchase the easement on your property. We have not heard from you regarding our offer to purchase the easement.

The city hereby offers \$100 for the purchase of the easement on your property for our sewer line project. Please consider this letter the city's final offer. The city's offer is based on recent property sales in your neighborhood. Do not hesitate to contact us regarding any counter offer that you want to propose.

Again, we inform you that the city must complete this project in a timely manner. Therefore, we are asking you to respond to our final offer no later than November 5, 2001, so that we can proceed with this project. If we are unable to negotiate the acquisition of the easement from you by that deadline, the city will be forced to exercise its statutory right of condemnation. It is our hope that we can successfully negotiate the acquisition of the easement.

If you have any question regarding the city's offer, please do not hesitate to contact the city's grant administrator, Grants R Us at 444/444-4444.

Very truly yours,

Carmen Mayor

cc Grants R Us

AR-11: SUGGESTED ACQUISITION RECORDS

Following are suggestions for establishing an acquisition recordkeeping system:

1. A separate acquisition case file should be established for each property owner who is covered by the requirements of the Uniform Act.
2. Files should be maintained for three years after completion of the project.
3. Recommended contents of each file are as follows:
 - a. A form indicating the applicable CDBG project number, date of project approval, parcel number for the property, and proof of title from each owner and tenant.
 - b. A copy of the preliminary acquisition notice, documentation that the owner received the notice, and the HUD brochure, *When A Public Agency Acquires Your Property*.
 - c. Documentation that the owner was invited to accompany the appraiser.
 - d. A copy of the appraisal(s) on which determinations of fair market value was based.
 - e. A copy of the written purchase offer, *State of the Basis for the Determination of Just Compensation*, and the date of delivery to owner.
 - f. A copy of the recorded deed, recorded easement, real estate and contract, and any donation/waiver forms.
 - g. A copy of the closing statements identifying incidental expenses.
 - h. Evidence that the owner actually was paid (i.e., copies of canceled checks).
 - i. A copy of any grievance appeal concerning the amount of payment or eligibility together with a copy of all pertinent determinations and other relevant documentation.

****ACQUISITION AND RELOCATION HELPFUL HINTS****

- ❖ Lack of compliance with URA will jeopardize access to CDBG funds.
- ❖ Acquisition requires an environmental review release prior to drawing funds.
- ❖ Remember the acquisition brochure in all instances.
- ❖ For acquisition less than \$2,500, where appraisals are not required, the grantee is still required to document how the price was determined (recent sales, assessor's office, etc.).
- ❖ Record the deed after transfer.
- ❖ URA applies regardless of who pays for acquisition if CDBG is involved in the project.
- ❖ "Voluntary acquisition" and "donation" are two separated terms with separate definitions.